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44538	7590	08/09/2006	EXAMINER	
DANIEL S. POLLEY, P.A. 1215 EAST BROWARD BOULEVARD FORT LAUDERDALE, FL 33301			DEANE JR, WILLIAM J	
			ART UNIT	PAPER NUMBER
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/848,753

Filing Date: May 03, 2001

Appellant(s): WEISS, JEFFREY N.

David S. Polley

For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed October 18th, 2004 appealing from the Office action mailed January 13, 2004.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The following are the related appeals, interferences, and judicial proceedings known to the examiner which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal:

None

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,298,122	Horne	10-2001
4,266,098	Novak	05-1981
5,604,791	Lee	02-1997

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 9 – 10, 12 and 25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Note lines 3 and 4 of claim 9.

Note line 3 of claim 10.

Note lines 2, 6 and 7 of claim 12.

Note that claim 25 depends from cancelled claim 24.

There are many more problems with the claims as presented. Therefore, applicant is cautioned not to conclude that this is an exhaustive list. The examples above are only intended to show applicant only some of the problems that exist.

In addition, applicant is reminded to, when making amendments to the claims, to point out in the specification where the added elements can be found in the

specification. For example where can the vertical switch be found in the specification?

Where is the series switch found or the dates (claims 27 – 29) found in the specification?

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 – 2, 4 – 5, 8 - 9, 13 – 14, 17 - 18, 25 - 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over U. S. Patent No. 4,266,098 (Novak) in view of U.S. Patent No. 6,298,122 (Horne).

Novak teaches the claimed device and method (see Col. 1, line 48 – Col. 3, line 37 and Figs 1 – 2), except for the setting of an activation period. Note that Horne teaches such at Fig. 3, elements 302 and 304 (In addition, note override codes). It would have been obvious to one of ordinary skill in the art to have incorporated such an activation period in the device and method as taught by Horne into the Novak device and method, as such would make the Novak device and method more convenient.

With respect to claim 21, such is inherent.

With respect to claim 16, note Col. 1, lines 48 – 57 of Novak.

With respect to claims 27 – 29, with respect to having a date field, since it has been shown that Horne has a time on and time off, it would be an obvious programming

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addition to incorporate dates and would have been obvious to one of ordinary skill in the art.

Claims 10 – 12, 15 - 16, 19 - 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Novak, Horne and U.S. Patent No. 5,604,791 (Lee).

Novak and Horne teach the claimed device and method except for the speaker aspect of the instant claims. However, note element #223 of Lee. Speakers are old in the art and it would have been obvious to one of ordinary skill to use a speaker wherever it was deemed necessary.

Further with respect to claim 15, switches are old in the art and it would have been obvious to one of ordinary skill in the art to use switches wherever it was deemed necessary. Note use of switches in the references cited above.

(10) Response to Argument

With respect to the 112 argument, the rejection is proper. The applicant was given a 112 rejection in the first Office Action and Applicant's response the amended claims still had problems. Applicant states that the problems were because of a printer malfunction and that is why the words were jumbled. The examiner does not believe that a "printer malfunction" is a defense to a 112 rejection. This is in particularly true when such jumbling of the words could have been detected with even a cursory proofreading. That fact is that jumbled words cannot be construed as particularly pointing out and distinctly claiming the subject matter which applicant deems as the invention. The examiner is put in the position of guessing as to applicant's intentions. In addition, even with applicant's corrected copy of the claims contained in the Appendix

of the instant Appeal Brief, there are still 112 problems. For example, note that claim 25 depends from canceled claim 24.

With respect to Issue No. 2, the problem here is the ambiguity of applicant's claims and the ability to particularly point out and claim applicant's invention. In addition, applicant's argument is not found in the claims.

What applicant argues is that the blocker device itself goes on and off at certain times. The timer, I guess, is like one of those device one uses when being gone from home for a week, which turns your lights on and off at certain times of the night so others would think someone is still at home. However, the claims, as written, do not make such clear. That is, as written, the claims read on both Novak and Horne as both have "a means for setting an activation period including a user entered starting time for blocking of incoming telephone calls;" (Claim 1). However, note Col. 2, lines 53 – Col. 3, line 24 of Novak and elements 302 and 304 in Fig. 1, of Horne. The examiner switched from a 102 (Novak) in the first Office Action to a 103 (Novak in view of Horne) in the Final Office Action not because the instant claims no longer read on Novak, but because the examiner felt that the time on/time off fields (elements 302 and 304) went to turning the device on or off as argued by applicant. If one reads Col. 7, lines 62 – 65, one would certainly believe that it is the device itself that is turned on off. Whether the device itself is turned on/off at the programmed time is of no real consequence when looking at the claims, since applicant has failed to claim such or at the very least make it clear in the claims that applicant is talking about turning on and off the device

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itself rather than having a device that is always on and then activates the blocking portions of the device at the programmed times.

With respect to Issue 3, Lee was used to show that it was old in the art to use a speaker, which is independent from the ringing bell of the user's telephone to alert a user that there was an incoming call. Note Fig. 5 of Lee, elements 100 (user's phone) and element 101 (base station). Note also that the base station 101 has a speaker 123, which is independent from phone 100 and alerts one to an incoming call (see Col. 14, lines 13 – 15 of Lee). Such arrangements are well known and notoriously old in the art and therefore it would have been obvious to one of ordinary skill in the art to have incorporated an audible device (speaker), which is independent from the user's telephone as taught by Lee into the Novak/Horne in order to have a different sound than user's telephone bell ringing.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



William J. Deane, Jr.

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Conferees:



William J. Deane Jr. (Primary Examiner)



Wing Chan (Supervisory Primary Examiner)



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